

**OCT 10 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

CESAR SERRATO-TORRES,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 02-72339

Agency No. A92-601-188

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted October 7, 2003\*\*  
Pasadena, California

Before: RYMER and TALLMAN, Circuit Judges, and LEIGHTON, District  
Judge.\*\*\*

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Ronald B. Leighton, United States District Judge for the Western District of Washington, sitting by designation.

Cesar Serrato-Torres petitions for review of a June 27, 2002 order of the Board of Immigration Appeals (BIA) taking no action on his appeal from the immigration judge's (IJ) denial of his request for reconsideration of a removal order. We lack jurisdiction because Serrato-Torres knowingly, intelligently, and voluntarily waived his right to appeal, *see, e.g., United States v. Estrada-Torres*, 179 F.3d 776, 781 (9th Cir. 1999) ("Because the immigration judge explained the right to appeal to Estrada-Torres (with the other deportees) and individually asked him specifically if he wanted to appeal his deportation order, his waiver of his right to appeal was 'considered and intelligent.'"), *overruled on other grounds in United States v. Rivera-Sanchez*, 247 F.3d 905 (9th Cir. 2001); *United States v. Chavez-Huerto*, 972 F.2d 1087, 1089 (9th Cir. 1992), and so he has failed to exhaust his administrative remedies. *See Joo v. INS*, 813 F.2d 211, 212 (9th Cir. 1987) (per curiam) ("A waiver of the right to appeal is a failure to exhaust administrative remedies."). Serrato-Torres was given both an oral and written explanation of his right to appeal, and was told that on appeal a higher court would say whether the IJ's decision was wrong or unfair. Due process does not require that he also be advised that the IJ's removal order might possibly be incorrect. *See United States v. Garza-Sanchez*, 217 F.3d 806, 810-11 (9th Cir. 2000). Finally, *Matter of Patino*, 23 I. & N. Dec. 74 (2001), is inapplicable as Serrato-Torres

chose to file a motion to reconsider with the IJ but did not challenge the validity of his waiver of the right to appeal.

DISMISSED.